## United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

## Advice Memorandum

DATE: March 6, 2008

536-5075-0150-2500

TO : Alan Reichard, Regional Director

Region 32

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Local Union No. 104, Sheet Metal Workers'

International Association (FABPRO) 536-5075-0150-6000

Case 32-CB-6336 536-5075-0150-7500

This case was submitted for advice as to whether the Union lawfully fined a member on withdrawal status. We agree with the Region that the Union lawfully fined the member, as he had not resigned his Union membership or clearly expressed an intent to resign.

## **FACTS**

Charging Party Rodney Yost joined Local Union No. 104, Sheet Metal Workers' International Association (the Union) in 1992, at which time he was given an information packet, including a copy of the Union constitution. The constitution includes a section on resignation and withdrawal from the Union, specifying that resignations must be in writing.

Until February 2007, 1 Yost worked for a union firm, Monterey Mechanical. During Yost's final two weeks with Monterey Mechanical, a Union Business Agent visited him at work, at which time Yost said that he was going to be leaving the Union and getting into something different. The business agent urged York not to leave the Union and asked where he was going, but Yost would not say.

On Yost's last day of work, February 16, he went to the Union's office and spoke with Union clerical employee Janice Vasconcelos. There is some dispute as to the exact content of their conversation - during the investigation of these charges, Yost claimed he told Vasconcelos that he was going to be leaving the Union and that he was not going to be working for union contractors, and asked Vasconcelos what he needed to do to leave the Union. Yost asserted that Vasconcelos advised him to write a letter to the Union

 $<sup>^{1}</sup>$  All dates hereinafter are in 2007, unless otherwise indicated.

Financial Secretary/Treasurer stating that he wanted to withdraw. Vasconcelos did not specifically recall speaking with Yost on that date but says that she knows the difference between a member resigning and a member seeking a withdrawal card, that she had been instructed as to the procedures for both situations, and that if a member came in and said that he wanted to leave the Union, she would have explained his options regarding resignation or withdrawal. It is undisputed that, on February 16, Yost wrote out and signed a note stating: "Effective 2-16-07, I would like to take withdrawal from the union."

Also on February 16, Yost went to work doing sheet metal work for a non-union company, FABPRO. The Union believes FABPRO to be an alter ego of a Union signatory company, WES-CO.

Later in February or in March, Yost received a call from Teresa Vargas, a Union dues processor. Vargas told him that he needed to send in a \$50 fee for a withdrawal, and she advised him that his withdrawal letter did not have sufficient reasons as to why he wanted to withdraw. According to Yost, he told Vargas that he did not want to withdraw, he wanted to leave the Union, that he had no intentions of going back to work for the Union, and that he was not going to send in the \$50 because he left the Union. Vargas says that, after she told Yost that he needed to send \$50 for his withdrawal card and needed to pay \$5 per month for the rest of the year, Yost responded by asking Vargas to send him a written breakdown of what he needed to pay. When Vargas told him that she could not send that information until she received the letter about what he would be doing during his withdrawal, Yost responded by sighing, at which point the conversation ended. Vargas denies that Yost ever said that he wanted to leave or resign from the Union, or that he had no intention of going back to the Union.

On April 4, Union business representatives Rick Werner and Kevin Van Buskirk went to FABPRO and spoke with Yost. In his first account of this meeting, Yost claimed that he was in the back of the shop watching someone welding when another employee told him that there were Union agents who wanted to talk to him. When Yost went to speak to them, Werner told him that the Union was going to prefer charges against Yost for doing covered work without a dispatch from the hiring hall. Yost protested that he was not performing covered work but, instead, merely observing another worker. In response, either Werner or Van Buskirk said that Yost was a member in good standing and could not perform any sheet metal work because he was on a withdrawal. One of them also told Yost that he needed to send in a resignation letter or they could bring him up on further charges.

In their version of this meeting, Werner and Van Buskirk both say that they saw Yost moving sheet metal and dressed to do work in the shop, with his hands covered with oil and dirt, as from working with sheet metal. agreement with Yost's version, they state that they accused Yost of going to work for a signatory employer (i.e., WES-CO) without securing a dispatch from the Union and warned that they would be filing Union charges against Yost. They say Yost replied that he had withdrawn from the Union the day he left working for Monterey Mechanical, and that he was working non-union. Werner told Yost that he was still a member of the Union, even though he had taken a withdrawal from the Union. Yost told Werner that he thought he was no longer a member, because when he previously left another union, the Teamsters, he had taken a withdrawal—and then he was no longer a member. Werner noted that Yost had made a recent dues payment, in response to which Yost said that his dues came automatically out of his credit union account. Yost asked Werner what he would have to do if he wanted to leave the Union, and Werner told him that he would have to send a written resignation to the Union's financial secretary.

After the Region presented Yost with what Werner and Van Buskirk had said, Yost changed his claim as to what had occurred that day. Yost did not dispute most of what Werner and Van Buskirk said, although he continued to deny that he was doing covered work. Yost added that, when confronted by Werner about continuing to do sheet metal work while in withdrawal status, he told Werner that "he did not know that he had to resign and cut all ties with the Union." Werner told him it was in the constitution and that if he did not send a resignation letter in soon, Werner could bring him up on more charges. According to Yost, Werner additionally asserted Yost had withdrawn to cover himself so if it did not work out at FABPRO, he could go back to a Union job. Yost said that he was done, that he signed his papers, and that he was not going to work as a member of Local 104. Yost acknowledged that Werner pointed out that Yost was a member in good standing and that his Union dues were current, to which Yost responded that his dues were automatically taken out of his vacation account at the Union credit union and that he not gotten around to stopping the dues deductions. It is undisputed that Yost continued to pay dues during this period, as automatic payments from his credit union account.

On April 12, Werner filed internal Union charges accusing Yost of performing work without a dispatch for signatory contractor WES-CO, doing business as FABPRO. On April 17, Yost sent a letter to the Union stating that he

was "resigning [his] membership in Local 104 effective at the close of business on February 16, 2007." It is undisputed that this was Yost's first written communication to the Union about withdrawal or resignation since his February 16 notice of withdrawal. On April 24, the Union sent Yost a letter acknowledging the Union's receipt of Yost's resignation letter on April 20.

On June 12, Yost appeared before the Union's trial committee, at which time he presented a written statement of facts. In that statement, he asserts that he told the Union clerk on February 16 that he wanted to resign his Union membership but that the clerk told him to write withdrawal in his letter. The statement also explains that Yost understood withdrawal to mean that he could go on withdrawal and then be reinstated without paying a new initiation fee. The statement additionally asserts that Yost told Union clerk Vargas, in response to her call following the submission of his written withdrawal request, that he wanted to resign from the Union, not withdraw. These statements contradict Yost's other statements in which he does not claim to have explicitly told either clerk that he wanted to resign.

On July 20, the Union sent Yost a copy of the decision by the Union trial committee, which found him guilty as charged and assessed a fine of \$4,000.00. On September 7, Werner filed additional charges against Yost for performing covered work for a company that is not covered by a collective-bargaining agreement with the Union. The letter stated that the charges concerned, but were not limited to, work that York had performed from February 17 to April 19. Werner filed these charges about working for a non-union contractor because Yost contended in his appeal that FABPRO was not a Union contractor. On November 8, Werner sent a letter to Yost amending the date of the new charges to be through April 17, and invited Yost to provide the Union with documentation of any resignation letter predating April 17. The November 8 letter made it clear that Werner had no intentions of charging Yost with any violations of the Union's constitution for any period after he submitted "a properly-addressed written statement of resignation to the Union." The Union's trial committee has not yet met to consider the new charges against Yost.

On September 20, Yost filed the charge in the instant case, alleging that the Union violated Section 8(b)(1)(A) of the Act by imposing discipline, and threatening to impose discipline, for work that he performed after he had resigned from the Union.

## ACTION

We agree with the Region that the Union lawfully fined the member, as he had not resigned his Union membership or clearly expressed an intent to resign.

Section 7 affords employees the right to resign from union membership at any time; a union cannot lawfully restrict that right. Accordingly, when an employee resigns his union membership, the union must promptly give effect to the resignation. Thus, any attempt to impose internal union discipline on an employee after he resigns from the union is unlawful.  $^4$ 

It is also well established that no particular format can be required to effect a resignation. The Board has stated, "[a]n employee may communicate his resignation from membership in any feasible way and no particular form or method is required so long as he clearly indicates that he no longer wishes to remain a member."<sup>5</sup> To the extent that there is any ambiguity or lack of specificity as to whether a member has resigned from a union, the union has the burden to clarify and provide the union member with information about his rights and responsibilities.<sup>6</sup> Therefore, a union violates the Act when it is apparent to the union that an employee is attempting to resign from union membership, and the union fails to make the resignation effective, or at least to seek to clarify the employee's intent.

In the instant case, we agree with the Region that it was not apparent to the Union that Yost meant to resign prior to the time it received his resignation, as Yost had

Machinists Local 1414 (Neufeld Porsche-Audi), 270 NLRB
1330, 1336 (1984), approved in Pattern Makers League v.
NLRB, 478 U.S. 95 (1985).

<sup>3</sup> Teamsters Local 492 (United Parcel Service), 346 NLRB 360, 363 (2006).

<sup>&</sup>lt;sup>4</sup> <u>Neufeld Porsche-Audi</u>, 270 NLRB at 1336; <u>Pattern Makers</u> League v. NLRB, 478 U.S. at 100.

<sup>&</sup>lt;sup>5</sup> Sales, Service, and Allied Workers' Union (Capitol-Husting Company, Inc.), 235 NLRB 1264, 1265 (1978).

 $<sup>^6</sup>$  Paperworkers Local 1033 (Weyerhaeuser Paper Co.), 320 NLRB 349, 352-353 (1995).

not clearly expressed to the Union an earlier intent to resign. Initially, we note that it is unclear whether Yost, in fact, intended to resign at any time prior to April 17. Thus, Yost's statements in February were consistent with a desire to take withdrawal status, not resignation. Early in February, Yost told a Union representative of his intent to leave the Union and go into something different. He declined to answer the Union representative's question about what he was going to do. His written request in February requested merely to withdraw, not resign, and thereafter he continued to pay dues to the Union until his April 17 resignation, after he had been told that internal Union charges would be filed against him. The implication that Yost sought withdrawal rather than resignation is confirmed by his statement to Union representatives Werner and Van Buskirk in April, when they confronted him about working without a dispatch, that "he did not know that he had to resign and cut all ties with the Union,"

In any case, even if we fully credit Yost's contention that he intended to completely resign from membership in the Union in February and at all times thereafter, the evidence is insufficient to demonstrate that any such subjective intent was ever made apparent to the Union. His statement to the Union clerk on February 16 that he wanted to "leave" the Union does not unequivocally demonstrate that he sought resignation rather than withdrawal. when the Union made efforts seeking to clarify his intentions, Yost did not clarify the situation. Thus, it is undisputed that, when Union dues processor Vargas contacted Yost and requested that he provide information as to his reasons for seeking withdrawal, Yost failed to provide any such information, thus preventing the Union from determining his actual intentions as to membership. In addition, although Yost asserts that he told Vargas that he wanted to resign, Yost continued to pay dues to the Union until after that conversation. We agree with the Region that this action and the other conduct enumerated here casts doubt on the credibility of Yost's assertion that he made his wishes clearly known. Our conclusion in this regard is bolstered by the Union's prompt acceptance when Yost submitted his written resignation letter on April 17; the Union processed it promptly and limited his fine to conduct occurring prior to that date. Under these circumstances, we agree with the Region that Yost never made it apparent to the Union that he sought to resign his membership, and that the Union did not unlawfully fail to clarify his intentions.

Accordingly, as Yost had not resigned his Union membership or clearly expressed an intent to resign prior

to the period for which he was subject to Union discipline, the Region should dismiss the charge in the instant case, absent withdrawal.

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